

From: Bordelon, Seth [seth_bordelon@fws.gov]
Sent: 5/11/2017 5:47:19 PM
To: Brian Breaux [Brian.W.Breaux@usace.army.mil]
CC: Gutierrez, Raul [Gutierrez.Raul@epa.gov]; Matthew Weigel [mweigel@wlf.la.gov]; Maryman, Joe [jmaryman@wlf.la.gov]; Troy Mallach [Troy.Mallach@la.usda.gov]; Fontenot, Alison [Fontenot.Alison@epa.gov]
Subject: Re: Spanish Lake Restoration - LRAM review
Flag: Follow up

Brian,

I've reviewed Spanish Lake Restoration's request to re-evaluate their LRAM credits. Below are my comments on each of the three issues they've asked us to consider.

Topic One (changing preservation to enhancement):

- 1) Why did the original MBI fail to mention Unit I as possibly being awarded additional credits if off site hydrologic improvements occurred? At the top of page 23 the MBI states "Specifically, additional credits for Unit II may be generated through basin-wide hydrologic improvements."
- 2) The next sentence in the MBI states "Management of any structures associated with the hydrologic restoration activities will be subject to the policies set forth in the addendum." This could be a problem because the mitigation bank sponsor does not have control over the operations of the Alligator Bayou Flood-Gate. It seems that multiple entities have had an interest in the operation of the flood-gate, including two Parish governments, the Corps (i.e., the Amite River and Tributaries, Bayou Manchac, Louisiana, Flood Damage Reduction and Ecosystem Restoration Project), and several private sector groups. Is this still a contentious issue? Is there a reasonable chance that the structure operation plan could change again in the foreseeable future?
- 3) We recommend that additional data be provided that clearly demonstrates functional lift from "preservation" to "enhancement". The MBI states that "Lands within the preservation portions of the mitigation area currently consist of primarily mature bottomland hardwood forests and baldcypress/tupelogum swamps and are considered to have a high value as wetland and wildlife habitat." I'd like to see maps of each unit that show where the benefits have occurred, vegetation data from before (if available) and after flood-gate closure, as well as elevation data and LIDAR maps within Units I and II. I'd also like to have the top elevation of the flood-gate when its closed to compare to elevations within the units.
- 4) The MBI required that tallow be controlled on all enhancement areas. If we do change the status of the remaining preservation acreage to enhancement, I think it'd be reasonable to require tallow treatments before doing so.

Topic Two (changing Units III and VI to "none" instead of "passive" under the "site management factor"):

- 1) The "passive" ranking might not have had anything to do with the offsite flood-gate. Culverts on the units could have been the reason those areas received a "passive" ranking and other units received "none". I'd like to see a map of Units III and VI that labels all structures/features (e.g., culverts) that affect the sites hydrologic conditions.

Topic Three (changing the size factor to >500 acres for Units I and II):

- 1) I agree that each unit larger than 500 acres should be classified in the proper category (>500 acres). Please label each units size on the requested map.

General Comments:

If a new project was proposed in this area asking for credit due to the functional lift created by the opening of an offsite structure I do not think the IRT would entertain it as a mitigation bank. However, in this case I think we should honor what was written into the MBI by considering the reclassification. They need to provide evidence though that clearly shows how and where functional lift has occurred. The document submitted fails to provide adequate information. A site visit may also be necessary. I'm not familiar with Spanish Lake and know most of the current IRT members have not worked on this bank before.

Thanks for coordinating with us. Give me a call if you'd like to discuss this further.

Seth Bordelon
U.S. Fish and Wildlife Service
Louisiana Ecological Services Office
646 Cajundome Blvd., Suite 400
Lafayette, LA 70506
(337) 291-3138 (office)
(337) 291-3139 (fax)
seth_bordelon@fws.gov

NOTE: This email correspondence and any attachments to and from this sender is subject to the Freedom of Information Act (FOIA) and may be disclosed to third parties.

On Wed, May 3, 2017 at 10:26 AM, Breaux, Brian W CIV USARMY CEMVN (US)

<Brian.W.Breaux@usace.army.mil> wrote:

ALL: attached is request for review of the LRAM for Spanish Lake Restoration. The sponsor requests reconsideration of values assigned to some of the variables. Essentially, it comes down to our interpretation of the water control structures on Frog Bayou and Alligator Bayou. Does the presence of these structures and their operation which is outside the control of the Sponsor constitute structural management? And should mitigation bank lands generate "enhancement" level credit for the altered operation of these structures?

Please review this information and provide a response/comment by May 12, 2017.

Brian W. Breaux
USACE Regulatory, Special Projects & Policy Team
(504) 862-1938
brian.w.breaux@usace.army.mil

Message

From: Breaux, Brian W CIV USARMY CEMVN (US) [Brian.W.Breaux@usace.army.mil]
Sent: 5/3/2017 3:26:36 PM
To: Bordelon, Seth [seth_bordelon@fws.gov]; Joshua Marceaux [joshua_marceaux@fws.gov]; Gutierrez, Raul [Gutierrez.Raul@epa.gov]; Fontenot, Alison [Fontenot.Alison@epa.gov]; Kyle Balkum [kbalkum@wlf.la.gov]; Matthew Weigel [mweigel@wlf.la.gov]; Joe Maryman [jmaryman@wlf.la.gov]
CC: Mayer, Martin S CIV USARMY CEMVN (US) [Martin.S.Mayer@usace.army.mil]
Subject: Spanish Lake Restoration - LRAM review
Attachments: 20170129 CEMVN response to request for LRAM review.pdf

Flag: Follow up

ALL: attached is request for review of the LRAM for Spanish Lake Restoration. The sponsor requests reconsideration of values assigned to some of the variables. Essentially, it comes down to our interpretation of the water control structures on Frog Bayou and Alligator Bayou. Does the presence of these structures and their operation which is outside the control of the Sponsor constitute structural management? And should mitigation bank lands generate "enhancement" level credit for the altered operation of these structures?

Please review this information and provide a response/comment by May 12. 2017.

Brian W. Breaux
USACE Regulatory, Special Projects & Policy Team
(504) 862-1938
brian.w.breaux@usace.army.mil

ROUTING AND TRANSMITTAL SLIP

Date

23 January 2017

TO: (Name, office symbol, room number,
building, Agency/Post)

Initials

Date

1. M. Farabee - Chief, Eastern Evaluation Section

MM / MF

23 Jan 2017

2. M. Mayer - Chief, Regulatory Branch

MM

23 Jan 2017

3. M. Park - Chief, Operations Division

MP

26 Jan 17

4. EXEC

MM 1/21/17

5.

Action	File	Note and Return
<input checked="" type="checkbox"/> Approval	For Clearance	Per Conversation
As Requested	For Correction	Prepare Reply
Circulate	For Your Information	See Me
Comment	Investigate	<input checked="" type="checkbox"/> Signature
Coordination	Justify	

REMARKS

Subject: Reconsideration of LRAM values associated with the Spanish Lake Restoration Mitigation Bank located in Ascension and Iberville Parishes, Louisiana.

Received By
CEM/MLK
US Army Corps of Engineers
New Orleans District
JAN 26 2017

DO NOT use this form as a RECORD of approvals, concurrences, disposals, clearances, and similar actions

FROM: (Name, organization symbol, Agency/Post)

Karen Mahl, OD-OA X 2328 (Please call for pick-up)

Room Number - Building
286Phone Number
504-862-2328

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7540-00-935-5862

OPTIONAL FORM 41 (REV. 3/2007)

ED_003039_00014672-00001



REPLY TO
ATTENTION OF

DEPARTMENT OF THE ARMY
CORPS OF ENGINEERS, NEW ORLEANS DISTRICT
7400 LEAKE AVENUE
NEW ORLEANS LOUISIANA 70118

Operations Division
Regulatory Branch

29 Jan 17

Mr. Stephen R. Wallace
Manager
Spanish Lake Restoration, LLC
7478 Highland Road
Baton Rouge, Louisiana 70808

Dear Mr. Wallace:

This responds to your letter dated November 17, 2016, concerning Spanish Lake Restoration Mitigation Bank located in Ascension and Iberville Parishes, Louisiana. You specifically request reconsideration of the Louisiana Wetland Rapid Assessment Method (LRAM) values associated with the mitigation bank.

I have directed the staff of our Regulatory Branch to carefully evaluate the information you provided in consultation with the other Interagency Review Team (IRT) members. Once the IRT has had the opportunity to review and deliberate this material, we will inform you of our preliminary findings regarding the LRAM valuations. If the IRT requires additional clarification to complete its analysis, we will arrange a meeting with your company to discuss further.

Thank you for your kind words of welcoming. If you have any other questions regarding this matter, please contact Mr. Martin Mayer, Chief, Regulatory Branch, at (504) 862-2255 or by email at martin.s.mayer@usace.army.mil.

Sincerely,

Michael N. Clancy
Colonel, U.S. Army
District Commander

FILE COPY

JAN 29 2017

Operations Division
Regulatory Branch

Mr. Stephen R. Wallace
Manager
Spanish Lake Restoration, LLC
7478 Highland Road
Baton Rouge, Louisiana 70808

Dear Mr. Wallace:

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Thank you for your kind words of welcoming. If you have any other questions regarding this matter, please contact Mr. Martin Mayer, Chief, Regulatory Branch, at (504) 862-2255 or by email at martin.s.mayer@usace.army.mil.

Sincerely,



Michael N. Clancy
Colonel, U.S. Army
District Commander


Mayer
OD-S
Park
OD
EXEC



Spanish Lake Restoration, LLC

Wetlands Bank and Ecological Resource

7478 Highland Road; Baton Rouge, Louisiana 70808

Phone: 225.928.5333

*DPNI rev'd
separate letter*

*Done
DOT*

DP

*DPM new
Mayer*

November 17, 2016

Colonel Michael Clancy
Commander & District Engineer
United States Army Corps of Engineers
New Orleans District
7400 Leake Ave
New Orleans, LA 70118

Re: Request for Consideration by Spanish Lake Restoration, LLC Mitigation Bank

Dear Colonel Clancy,

Congratulations upon your recent assignment as the New Orleans District's 63rd Commander and District Engineer. We are truly honored to have someone in command with your educational background and such a distinguished and decorated service record. Thank you for your continued service to your country. Spanish Lake Restoration, LLC (SLR) respectfully requests that you please place SLR's Mitigation Bank on your agenda and schedule a meeting within the NOD to discuss matters outlined below.

SLR is a 4,000+ acre Mitigation Bank located in Iberville & Ascension Parishes that was established in 1999 using the Wetland Valuation Assessment (WVA) methodology. More than 300 Individual and Nationwide §404/§10 Permits were issued under the WVA between 1999-2011 and later, the New Orleans District's Civil Works Division in 2014 and 2015 purchased a number of compensatory mitigation credits under the WVA from SLR for a levee and a diversion project.

Beginning in 2011, a series of new Mitigation Bank Assessment techniques began to be implemented that have had the effect of seriously devaluing SLR's credit ratios, starting with the Modified Charleston Method (MCM). In 2014, the New Ratio Method (NRM) was instituted in lieu of the MCM and then most recently in early 2016, the Final Interim Version of the Louisiana Wetland Rapid Assessment Method (LRAM) was put into effect. The NRM and LRAM have carried forward the MCM's decrease in SLR's credit values.

There are three issues pertaining to the revaluation of SLR's Mitigation Bank that we respectfully ask for your consideration: (1) SLR be given "Enhancement" status under the LRAM for "Preservation" acreage (32.24 acres in Unit I & 380.55 acres in Unit II) within the Spanish Lake Basin that was beneficially improved approximately 6 years ago, as permitted in SLR's MBI; (2) SLR Bank Units III & VI be designated under the LRAM "Site Management Factor" as "None", instead of "Passive", where Units I & II are already designated as "None"; and (3) SLR Bank Units I & II be recognized under the LRAM "Size Factor" as ">500 acres", instead of "<500 acres", where Unit I has 1,750 acres under Servitude and Unit II has 1,139 acres under Servitude. We have detailed each of these matters in the attached "*Issues For Consideration*" outline.

We have discussed these issues with U.S. EPA Region VI and we now, by this correspondence, respectfully request your consideration.

We thank you in advance.

Sincerely,



Stephen R. Wallace
Manager
Spanish Lake Restoration, LLC

Cc: Mr. William H. Honker, P.E., Director—Water Division, EPA Region VI
Mr. Mark R. Wingate, Deputy District Engineer, New Orleans District
Mr. Murray P. Starkel

Issues For NOD Consideration

1. LRAM “Mitigation Type Factor” Option: Preservation To *Enhancement* Status

→ SLR respectfully requests that it be given “*Enhancement*” status under the LRAM “Mitigation Type Factor” Option for remaining “Preservation” acreage (32.24 acres in Unit I & 380.55 acres in Unit II) within the Spanish Lake Basin that has benefitted from hydrological improvements implemented >6 years ago.

SLR’s MBI provides that improvements to the hydrological regime in the Spanish Lake Basin would permit SLR to have its Preservation credits extended into *Enhancement* credits. The MBI says “*This agreement may be amended to extend mitigation credits for additional **enhancement associated with hydrologic improvement** activities to areas where the sole basis of mitigation credit is **currently Preservation**.*” (p. 22) The MBI recognizes that off-site activities can either negatively alter or positively inure to the benefit of the Bank’s value: “*Mitigation potential may be adjusted by MBRT at any time should an Act of God or human- induced activity adversely affect the value or function...*” and “*If...programs are used offsite...and the programs’ activities either directly or indirectly benefit the Bank, then the Sponsor will not forfeit credits.*” It’s an outcome-determinative criterion.

Under the LRAM, “*Enhancement*” is the manipulation or modification of a wetland that heightens, intensifies or improves specific aquatic resource function(s) or is something done to change the growth stage or composition of the vegetation present, even though it may lead to a decline in other function(s). This is very similar to the definition of “Enhancement” set forth in 33 CFR §332.2: “The manipulation of the physical, chemical or biological characteristics of an aquatic resource to heighten, intensify or improve a specific aquatic resource function.”

Activities undertaken by SLR to restore the natural hydraulic connectivity between Bayou Manchac and the 14,000+ acre Spanish Lake Basin (including its headwaters: Alligator Bayou, Bayou Paul & Bayou Braud) and related matters, included: (i) performing extensive historical, political, biological, topographical and hydrological research/follow-up required to open the off-site Alligator Bayou Flood-Gate, improperly used as a weir since the 1950’s to artificially maintain high water levels throughout the entire Spanish Lake Basin; (ii) spear-heading a lawsuit and obtaining a final Court Order (upheld in 2014 by the La. 1st Circuit Court of Appeal) to stop and prevent the use of the Flood-Gate as a weir; (iii) after the Flood-Gate was opened and at the Corps’ behest, obtaining a Preliminary JD for SLR’s Bank on 1261.44 Bank acres in the Spanish Lake Basin to delineate jurisdictional wetlands (1159.66 acres) and non-wetland/waters of the U.S. (101.78 acres); (iv) identifying and removing 127 acres from SLR’s Bank in the Spanish Lake Basin impacted by mineral activity; (v) transferring all credits sold from the removed acreage to non-impacted portions of SLR’s Bank; and (vi) Signatory to the 2010 Spanish Lake/Alligator Bayou Flood-Gate Drainage Agreement.

Opening the Flood-Gate was equivalent to removing a low dam that had been in place for >50 years. This resulted in significant improvement to aquatic resource functioning not only within SLR's Bank, but also the entire larger Spanish Lake Basin. The hydrologic regime for surface soils with elevations between 1.5-6.0 feet NAVD was restored from a permanently flooded basis to a seasonally inundated regime. More than 50+ detrimental years of continuously extended hydro-periods within the Spanish Lake Basin were eliminated, normal historical water levels were reestablished and vital flood storage capacity was regained. This hydrologic restoration allowed for seasonal inundation/drying within the upper soil profile (reduction/oxidation) facilitating nutrient uptake that resulted in the regeneration of native hardwoods and bald cypress, which had been over-stressed and were not able to propagate in the continuously standing water. Habitat quality has of course, likewise, greatly increased in the process.

SLR has documented the hydrologically-enhancing benefits of this action through the attached 2000-2016 USGS Gage Data for Bayou Manchac (#07378746) and Alligator Bayou (#07378745), which establish that following the lowering of the Flood-Gate, the water levels in Spanish Lake Basin were now in sync with those of Bayou Manchac—i.e., the natural hydrological regime had been restored (*See* Exhibit A). Also shown therein is the resultant overall lowering of water levels within the Basin, as well as significantly decreased durational periods of flooding events. It is worth noting that even when the Gate is temporarily “up” during episodic Amite River backwater flooding events, hydrological flow within the Spanish Lake Basin is not significantly altered because the Basin cannot naturally drain until the water level in Bayou Manchac is lower.

The improved ecological condition of this aquatic resource is perceptually clear and the resultant functional and value output is self-evident. “*New conditions*”, including the much improved hydrology, are established and present within the Spanish Lake Basin and warrant an upgrade of the remaining unsold Preservation acreage within SLR's Bank to *Enhancement* status.

2. LRAM “Project Site Management Factor” Option: Passive to *None*

→ SLR respectfully requests that the LRAM “Project Site Management Factor” Option be changed from “Passive” to “*None*” in SLR Units III & IV, where SLR Units I & II are already properly designated as having “*None*” and use of the Flood-Gate did not create these wetlands nor does it maintain or sustain them.

Under LRAM, Project Site Management “refers to the level of maintenance or management that is required to maintain wetland hydrology on the project site.” “*Passive*” Site Management is defined as “...structures that are required...to maintain hydrology from off-site.” “*None*” (Project Site Management) means that “the site functions without dependence on structural management.”

None of the subject wetlands “*require*” the passive use of the Flood-Gate as a control structure to artificially maintain some set water level in order for the Bank’s wetlands to properly function or be sustained in any manner. SLR’s wetland hydrology is not dependent upon the Gate’s absence or presence nor is it “*maintained*” by “*management*” of the Flood-Gate. The Spanish Lake Basin wetland hydrology now functions in relative accord with the natural hydrologic regime of the Amite River/Bayou Manchac Watershed. Indeed, SLR’s wetlands were in existence long before the Flood-Gate was improperly used as a weir, although these wetlands were impaired during that 50+ year period by the artificially elevated water levels that were then-maintained above the natural hydrological regime.

Additionally, SLR Bank Units I, II (in part), III & IV are in the Spanish Lake Basin behind the Flood-Gate. It’s *inconsistent* to categorize Units III & VI as having “*Passive*” Project Site Management (which comes with a negative “*-1 M-Value*”), although Unit I and the pertinent portion of Unit II are both properly designated as having “*No[ne]*” Site Management (which comes with a neutral “*0 M-Value*”).

Similarly, another reason supporting SLR’s request that the “*Passive*” Project Site Management Factor *not* be ascribed to any of SLR’s Units is the fact that an upstream, adjacent Bank (Bayou Manchac-Oakley) was designated as having “*No[ne]*” Site Management for the LRAM Project Site Management Factor. The Bayou Manchac-Oakley site is hydrologically connected to SLR within the Spanish Lake Basin and, likewise, is located behind the Flood-Gate.

3. LRAM “Size Factor” Option: >500 acres

→ SLR respectfully requests that the LRAM “Size Factor” Option in SLR Units I & II be changed from “<500 Acres” (which comes with a 0.0 M-Value) to “>500 Acres” (*which comes with a 0.5 M-Value*), where SLR’s Unit I has 1,750 Acres under servitude and Unit II has 1,139 Acres under servitude.

LRAM defines the “*Size Factor*” as follows: “The measure of the *total size* of the mitigation project that will be placed under protection of a conservation servitude.” Total size is the key factor because “larger tracts are less common, have a greater potential for habitat diversity, provide a greater degree of isolation and thereby offer higher quality habitat than smaller tracts.”

The “total size” of SLR’s Mitigation Bank is 4,000+ acres of protected wetlands under a conservation servitude, which consists of several >500+ acre contiguous tracts. All of SLR’s wetlands remain isolated within the greater 24,000+ combined acre Manchac/Spanish Lake Basin. SLR’s MBI is replete with references to this 4000+ acre Bank as having a “high value as wetland and wildlife habitat” precisely because of the large amount of isolated acreage under servitude. SLR is not being given the proper “*larger tract*” value its wetland acreage is due.

SLR's Remaining Available Mitigation Acreage (Units I, II, III & VI):

Unit I: 1,750 acres under servitude and currently has **32.24** acres remaining, within the Spanish Lake Basin (Alligator Bayou drainage area).

LRAM Factor	Option	NOD's M-Value	SLR's M-Value
Mitigation Type	Preservation	0.4	3
	Enhancement		
Management	None	0	0
Negative Influences	Low	0	0
Size	500 : 100 acres	0	0.5
	>500 acres		
Buffer/Upland	None	0	0
Sum	-	0.4	3.5
LRAM Credits:		12.90	112.84

Unit II: 1,139 acres under servitude and currently has **1087.89** acres available, of which (a) **380.55** acres are within the Spanish Lake Basin and (b) **707.34** are within the Bluff Swamp Basin (Frog Bayou Drainage area). Therefore, SLR proposes separate LRAM Values for each "Sub-Unit."

→Sub-Unit (a)---Within Spanish Lake Basin (380.55-ACRES)

LRAM Factor	Option	NOD's M-Value	SLR's M-Value
Mitigation Type	Preservation	0.4	3
	Enhancement		
Management	None	0	0
Negative Influences	Low	0	0
Size	500 : 100 acres	0	0.5
	>500 acres		
Buffer/Upland	None	0	
Sum	-	0.4	3.5
LRAM Credits:		152.22	1,331.93

→ Sub-Unit (b)---Within *Bluff Swamp* Basin (707.34 ACRES)

Factor	Option	NOD's M-Value	SLR's M-Value
Mitigation Type	Preservation	0.4	0.4
Management	None	0	0
Negative Influences	Low	0	0
Size	500 : 100 acres	0	
	>500 acres		0.5
Buffer/Upland	None	0	
Sum	-	0.4	0.9
LRAM Credits:		282.94	636.61

→ This portion of Unit II will likely experience a similar hydrologic improvement in the near future. SLR requests Enhancement Value is likewise given to that acreage when it occurs.

Unit III: 612 acres under servitude and currently has **149.45** acres available, within the Spanish Lake Basin.

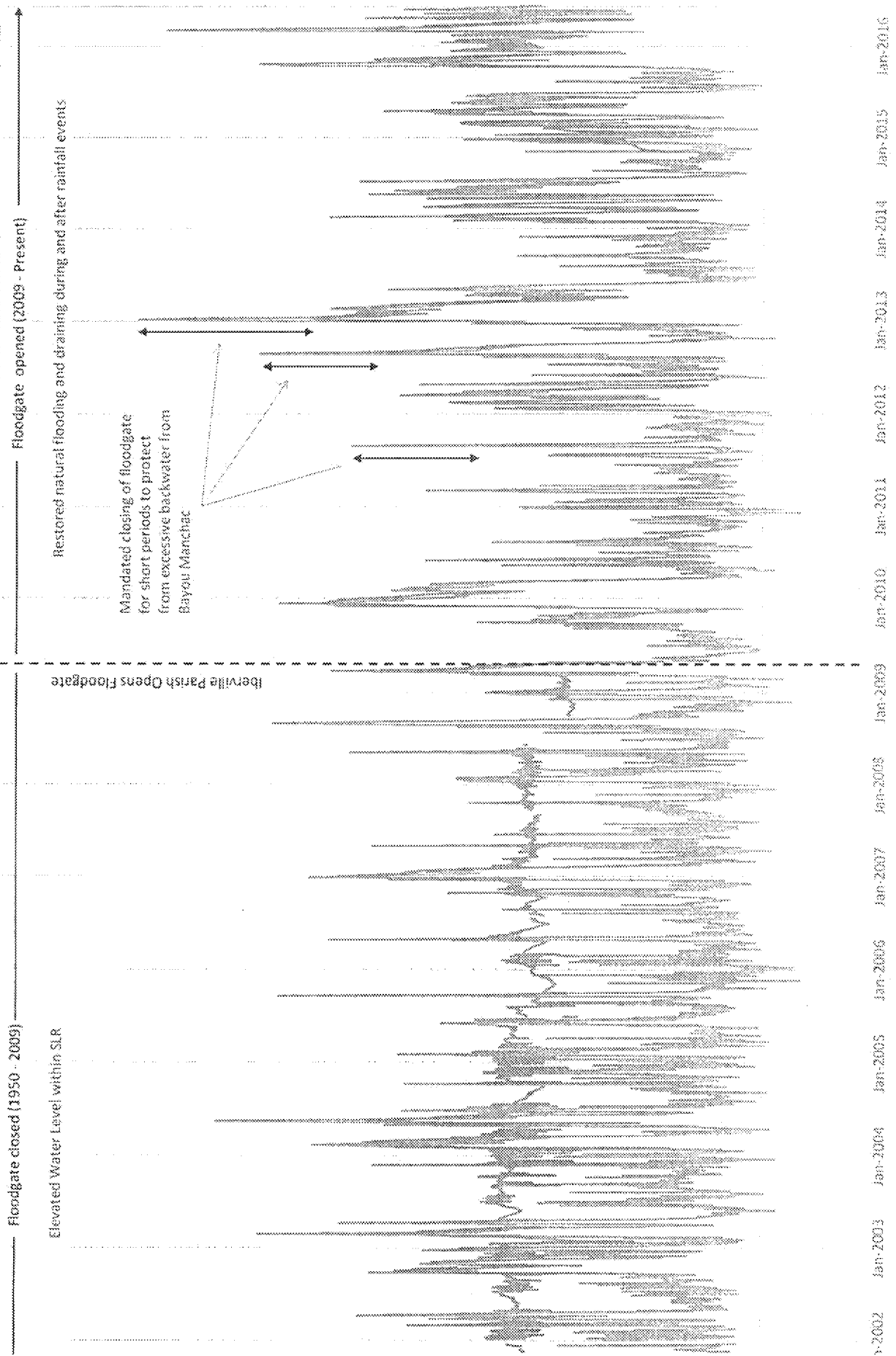
Factor	Option	NOD's M-Value	SLR's M-Value
Mitigation Type	Enhancement	3	3
Management	Passive	-1	
	None		0
Negative Influences	Low	0	0
Size	>500 acres	.5	.5
Buffer/Upland	None	0	0
Sum	-	2.5	3.5
LRAM Credits:		373.63	523.1

Unit VI: Contiguous with and in-between 612 acres of Unit III and approximately 670 acres of Unit I, Unit VI currently has **150.4** acres available, within the Spanish Lake Basin.

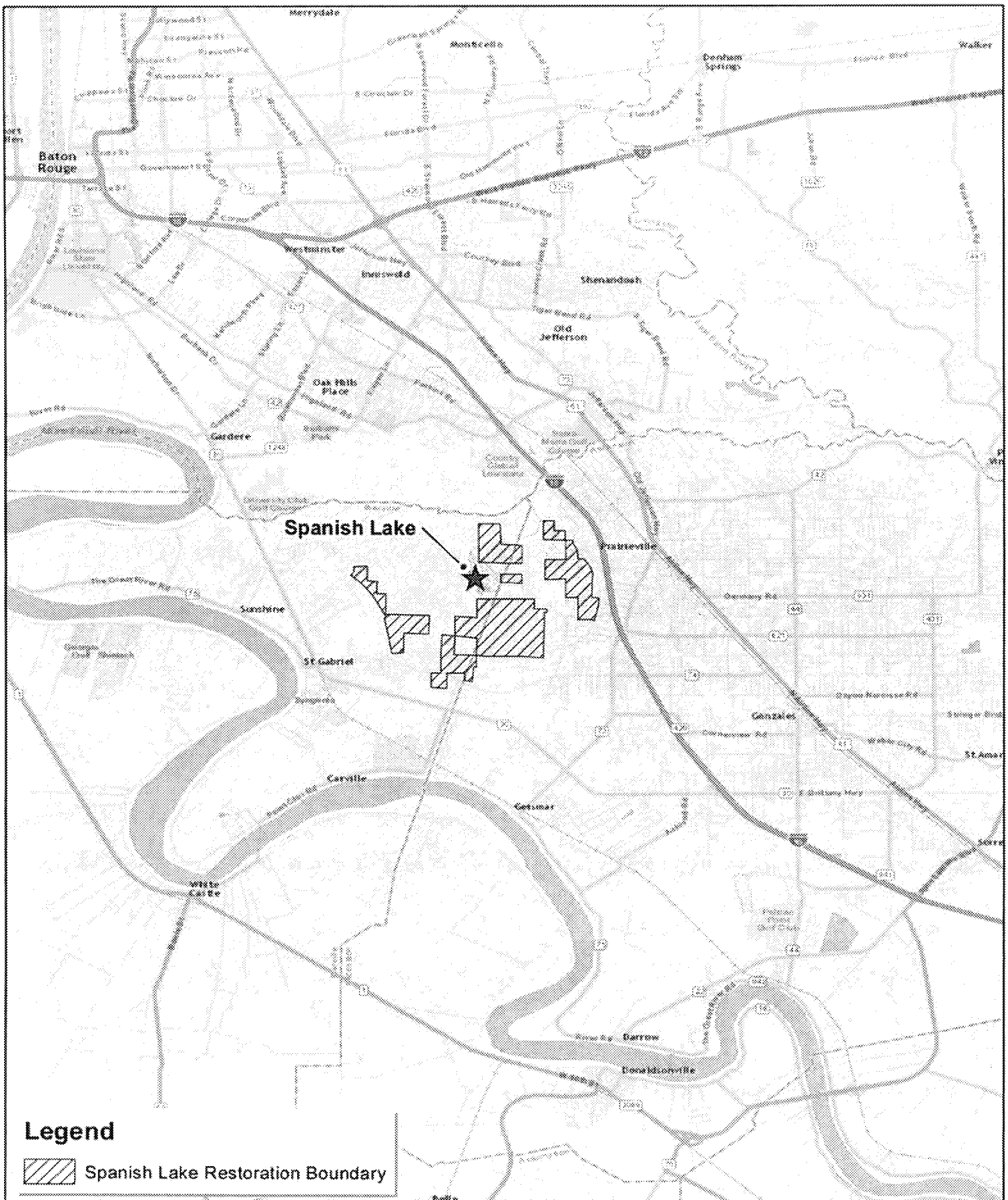
Factor	Option	NOD's M-Value	SLR's M-Value
Mitigation Type	Enhancement	3	3
Management	Passive	-1	
	None		0
Negative Influences	Low	0	0
Size	>500 acres	.5	.5
Buffer/Upland	None	0	0
Sum	-	2.5	3.5
LRAM Credits:		376	526.4

Water Levels from USGS Stations

07378746 Bayou Manchac at Alligator B. 07378745 Alligator Bayou



Spanish Lake and Spanish Lake Restoration Vicinity Map



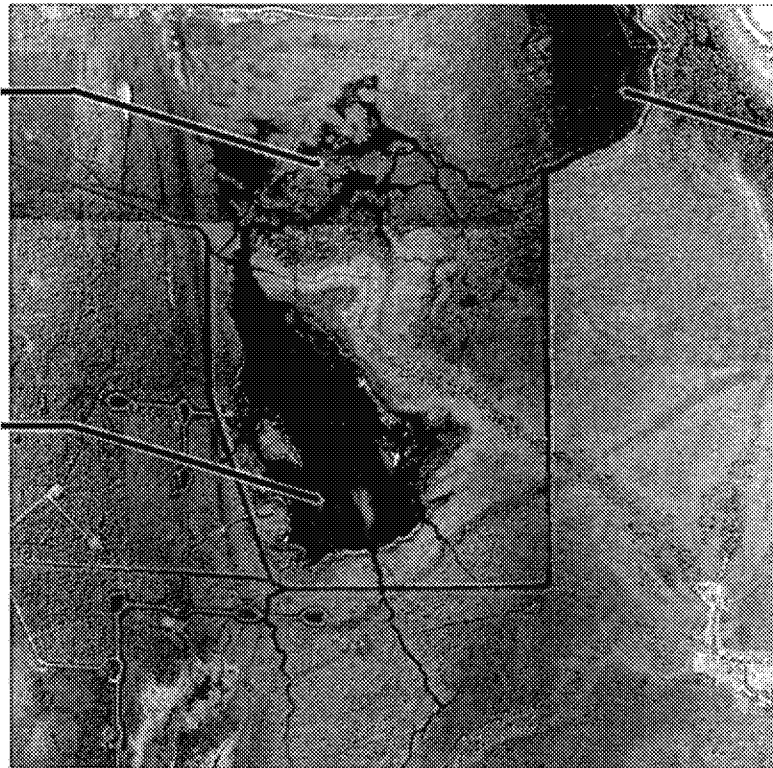
Effects of the Alligator Bayou Floodgate Opening on Spanish Lake

Before Floodgate Opened
1950 - 2010 Permanently Flooded

Permanently Flooded
old growth cypress swamp
(no regeneration)

Permanently Flooded
Cypress Flats
(no regeneration)

Permanently Flooded
shallow Spanish Lake
hydrilla dominance



After Floodgate Opened
November 2011 - Seasonally Inundated

Seasonally Flooded
cypress swamp
facilitating
seedling growth

Seasonally Flooded
Cypress Flats
currently regenerating

Seasonally Flooded
Spanish Lake
increased plant/
habitat diversity



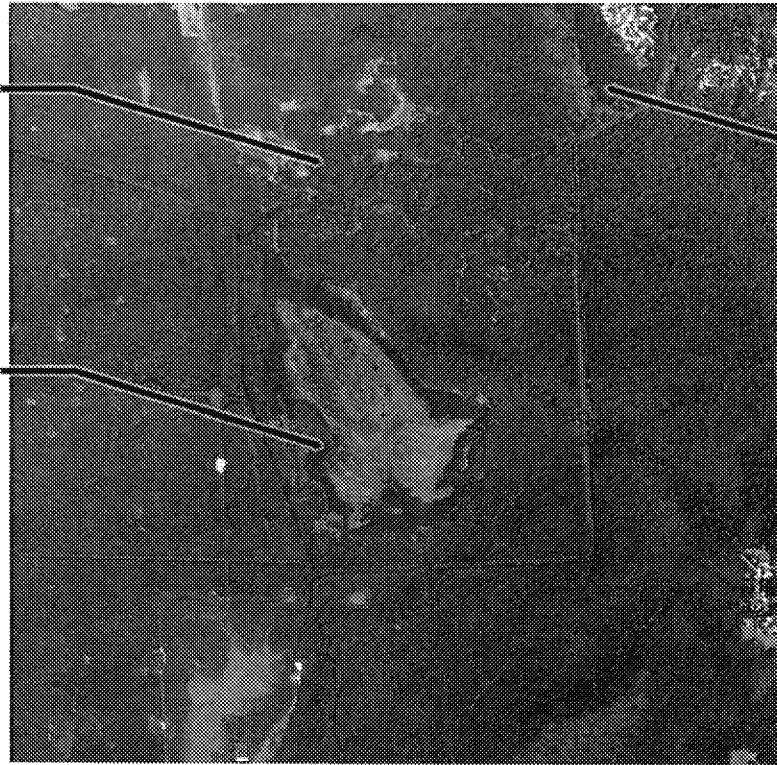
Effects of the Alligator Bayou Floodgate Opening on Spanish Lake

After Floodgate Opened
August 2015 Seasonally Inundated (Summer - Dry Period)

Seasonally Flooded
cypress swamp
facilitating
seedling growth

Seasonally Flooded
Cypress Flats
currently regenerating

Seasonally Flooded
Spanish Lake
increased plant/
habitat diversity

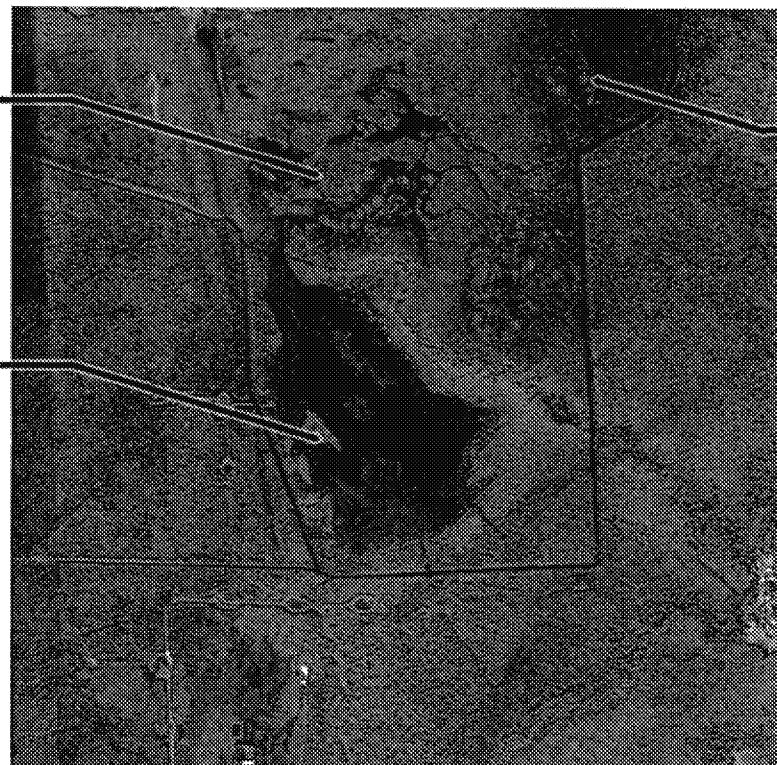


After Floodgate Opened
January 2016 - Seasonally Inundated (Winter - Wet Period)

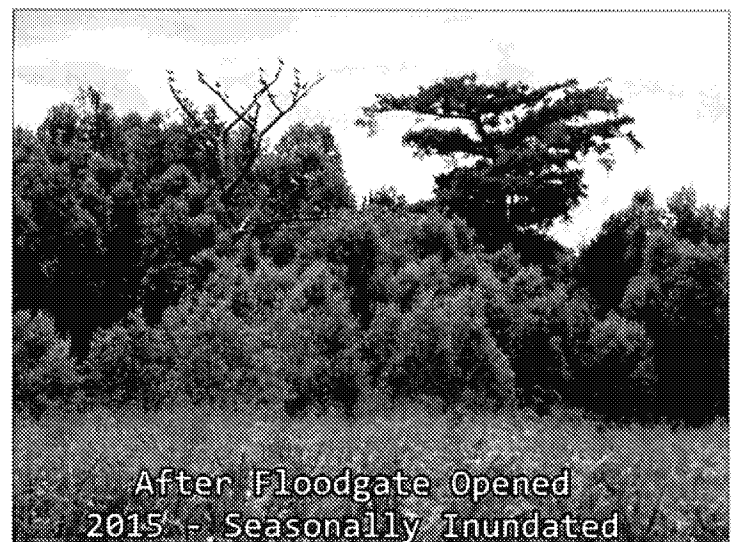
Seasonally Flooded
cypress swamp
facilitating
seedling growth

Seasonally Flooded
Cypress Flats
currently regenerating

Seasonally Flooded
Spanish Lake
increased plant/
habitat diversity



Effects of the Alligator Bayou Floodgate Opening on Spanish Lake



Message

From: Martinez, Maria [Martinez.Maria@epa.gov]
Sent: 4/25/2016 3:28:09 PM
To: Przyborski, Jay [Przyborski.Jay@epa.gov]
CC: Gutierrez, Raul [Gutierrez.Raul@epa.gov]
Subject: Potential dates for Tim Hardy's visit on Spanish Lake Mitigation Bank

Jay,

We are needing your assistance regarding the Spanish Lake Mitigation Bank (New Orleans District). One of their legal representatives is coming in for a meeting and we would like for you to join us. Raul and I can meet with you and bring you up to date on the issues.

Which of the dates below work best for you?

5/2	1-4
5/3	1-4
5/5	1-3

Thanks,

Maria
5-2230

Message

From: Martinez, Maria [Martinez.Maria@epa.gov]
Sent: 4/25/2016 3:21:36 PM
To: Gutierrez, Raul [Gutierrez.Raul@epa.gov]
Subject: Spanish Lake

Raul,

Who at ORC do you suggest we include in the Spanish Lake meeting?

Maria

Message

From: Martinez, Maria [Martinez.Maria@epa.gov]
Sent: 4/25/2016 3:20:16 PM
To: Gutierrez, Raul [Gutierrez.Raul@epa.gov]
Subject: Potential dates for Tim Hardy's visit

Raul,

Tim Hardy representing the Spanish Lake mitigation bank is coming into the regional office for a meeting on his concerns about LRAM. Can you join us by conference call? Which of the dates below work best for you?

5/2	1-4
5/3	1-4
5/5	1-3

Thanks,

Maria

Message

From: Martinez, Maria [Martinez.Maria@epa.gov]
Sent: 4/11/2016 2:15:12 PM
To: Honker, William [honker.william@epa.gov]
CC: Watson, Jane [watson.jane@epa.gov]; Garcia, David [Garcia.David@epa.gov]; Gutierrez, Raul [Gutierrez.Raul@epa.gov]
Subject: Spanish Lake Update
Attachments: Spanish Lake 01april2016.doc

Bill,

Below is a snapshot update on the Spanish Lake Mitigation Bank and LRAM. Raul has also updated the full factsheet which is attached. Basically, the Spanish Lake sponsors need to go through the mitigation banking process and request a meeting with the Corps to explore options.

Please let us know if you want us to schedule a briefing.

Maria
5-2230

Spanish Lake Snapshot Update:

The New Orleans District of the US Army Corps of Engineers (Corps) has adopted the Louisiana Rapid Assessment Method (LRAM) to assess credits for impacts and compensatory mitigation. The Corps converted the credits for Spanish Lake Mitigation Bank and kept the mitigation type (Re-establishment, Rehabilitation, Enhancement, etc.) as Preservation for this bank. The bank has objected and is requesting the mitigation type be reclassified as enhancement due to the role the sponsors played in opening the culverts in Alligator and Frog bayous where they empty into Bayou Manchac. While the culverts are located off the bank, the Mitigation Bank Instrument is written so that the sponsors may be able to claim enhancement credits for their efforts in restoring a more natural hydrologic regime to the Spanish Lake Basin. At this time, it is incumbent on the sponsor to provide additional information and a formal request to the Corps to have the credits reclassified as enhancement. Once the Corps feels that the request and information provided are adequate, they will forward the documents to the Interagency Review Team for additional review and comments.

TOPIC: Spanish Lake Mitigation Bank

DATE: April 1, 2016

CONTACT: Raul Gutierrez (480-612-1188)

PURPOSE/ACTION NEEDED: Informational

SUMMARY:

Spanish Lake Mitigation Bank transferred ownership from Lago Espanol, LLC, to Spanish Lake, LLC. Only surface rights were transferred, with Lago Espanol keeping the subsurface mineral rights. Oil and gas activities are allowed under the 1999 Conservation Servitude set up by Lago Espanol (the owner at the time) and the Corps of Engineers.

Oil and gas activities on site have increased over the last few years. Spanish Lake was concerned with the increase in activity and asked EPA to step in. After two site visits, it was concluded that Spanish Lake's issues need to be handled by the Corps (wetland jurisdictional determinations, individual and general permits) or with the previous Lago Espanol and/or the oil and gas companies (property rights, property access).

When the ownership of the bank was transferred to Spanish Lake, the credit valuation was redone using the Modified Charleston Method developed by the New Orleans District of the Corps of Engineers and the Interagency Review Team (EPA, USFWS, US NMFS, LDNR, LDWF). This resulted in fewer available credits for sale. The Corps looked at their assessment again and was going to reward an increase in credits, but the use of MCM is no longer allowed under the FY15 budget.

BACKGROUND:

Spanish Lake Mitigation Bank is located in the Spanish Lake and Bluff Swamp Basins of Ascension and Iberville parishes, and was established in 1999. The bank sponsor at the time was Lago Espanol, LLC.

March 8, 1999 – Conservation Servitudes are signed in Ascension and Iberville parishes. Section 2(b), on page 2, allows for oil and gas resource exploration and extraction activities with approved Department of the Army permits. This is discussed further in Section 4 on page 4. Copies of both of these servitudes are attached.

March 17, 1999 – Interagency agreement is signed, Lago Espanol is recognized by the Corps as an approved bank, and the first credits are released.

January 7, 2011 – Lago Espanol, LLC, is renamed Spanish Lake, LLC. When the property was sold to Spanish Lake, Lago Espanol kept the mineral rights for the bank.

August 5, 2013 – Areas with too much salt in the soil were not performing well and were removed (closed) from the bank. Credits sold from these areas were debited from other parts of the bank that were attaining performance standards/success criteria. Closed units can no longer be used to generate credits, but are considered in compliance with the Interagency Agreement and still covered under the Iberville Conservation Servitude executed in March 1999. Coincidentally, all of the identified well sites are in or adjacent to these closed units.

ISSUES:

Subsurface rights and production activities

This issue is a civil matter that should be settled between the two parties, in this case Spanish Lake and the owners of the well pads. The Conservation Servitude allows for oil and gas activities on site.

Sites 1-3: Pontchartrain Well, Natalbany Heirs Well, Natalbany Well 18

These wells were permitted under New Orleans District Regional Permit 13 (NOD-13). Any issues with permitting of these activities should be handled by the Corps, as they are the issues of such permits.

Site 4: Natalbany 8

This well went through the Individual Permitting process. The public notice made no mention of the location of the project within a mitigation bank. It is agreed that the use of another bank for compensating for unavoidable impacts to wetlands was in violation of the Interagency Agreement.

Site 5: Pipeline

Bryant Smalley (OSC for Region 6) found no issues with the placement of the pipelines on the surface of the soil. A 404 permit would have been needed had the pipes been buried. The pipes would also have to be pressure tested, and any leaks or other issues with the pipes would not be immediately evident, nor as easy to fix.

NOD-13

This general permit, used for proposed and ongoing oil and gas exploration expired on December 31, 2012. One recommendation we can make is that Mitigation Banks should be included in the general permit as an area exempt from any authorized work, along with national parks, monuments, wildlife refuges, etc.

Update April 1, 2016:

The New Orleans District of the US Army Corps of Engineers (Corps) has adopted the Louisiana Rapid Assessment Method (LRAM) to assess credits for impacts and compensatory mitigation. The Corps converted the credits for Spanish Lake Mitigation Bank and kept the mitigation type (Re-establishment, Rehabilitation, Enhancement, etc.) as Preservation for this bank. The bank has objected and is requesting the mitigation type be reclassified as enhancement due to the role the sponsors played in opening the culverts in Alligator and Frog bayous where they empty into Bayou Manchac. While the culverts are located off the bank, the Mitigation Bank Instrument is written so that the sponsors may be able to claim enhancement credits for their efforts in restoring a more natural hydrologic regime to the Spanish Lake Basin. At this time, it is incumbent on the sponsor to provide additional information and a formal request to the Corps to have the credits reclassified as enhancement. Once the Corps feels that the request and information provided are adequate, they will forward the documents to the Interagency Review Team for additional review and comments.

Message

From: Joe Maryman [jmaryman@wlf.la.gov]
Sent: 6/21/2017 3:16:10 PM
To: Gutierrez, Raul [Gutierrez.Raul@epa.gov]; Breaux, Brian W CIV USARMY CEMVN (US) [Brian.W.Breaux@usace.army.mil]
Subject: RE: Texada field visit

I am good with whatever y'all decide just let me know.

Thanks

Joe Maryman
Biologist
Louisiana Department of Wildlife and Fisheries
jmaryman@wlf.la.gov
225-765-2380

-----Original Message-----

From: Gutierrez, Raul [mailto:Gutierrez.Raul@epa.gov]
Sent: Wednesday, June 21, 2017 9:57 AM
To: Breaux, Brian W CIV USARMY CEMVN (US); Joe Maryman
Subject: RE: Texada field visit

Forecast still shows lots of rain and wind (and tornado watch until 10 am tomorrow morning). The site might be too wet or inaccessible, so I say we postpone.

In lieu of the site visit, can we schedule a conference call to discuss Spanish Lake and maybe come up with a consensus or game plan for that issue?

-----Original Message-----

From: Breaux, Brian W CIV USARMY CEMVN (US) [mailto:Brian.W.Breaux@usace.army.mil]
Sent: Wednesday, June 21, 2017 9:44 AM
To: Gutierrez, Raul <Gutierrez.Raul@epa.gov>; Maryman, Joe <jmaryman@wlf.la.gov>
Subject: Texada field visit

Raul/Joe: we are scheduled to do a site visit for the Texada Mitigation Area expansion tomorrow. Are you still up to it or because of the uncertainty with the weather, should we reschedule?

Brian W. Breaux
USACE Regulatory, Special Projects & Policy Team
(504) 862-1938
brian.w.breaux@usace.army.mil

Message

From: Martinez, Maria [Martinez.Maria@epa.gov]
Sent: 6/20/2017 1:45:26 PM
To: Siftsoff, Angelica [siftsoff.angelica@epa.gov]
CC: Boyd, Wanda [Boyd.Wanda@epa.gov]; Gutierrez, Raul [Gutierrez.Raul@epa.gov]
Subject: 6WQ-EM WAR Issues for the week of 6/19/17

Angelica,

Below is one of two 6WQ-EM WAR items for this week. Wanda is going to send you another WAR issue under a separate email.

Maria

SPANISH LAKE MITIGATION BANK CREDIT REVALUATION: On June 15, 2017, Wetlands Section staff along with the Corps New Orleans District IRT (Corps, EPA, LDWF; USFWS was absent) met with the Spanish Lake Mitigation Bank sponsors. The discussion focused on the valuation of credits of the bank under the Louisiana Wetlands Rapid Assessment Method (LRAM). The sponsors' presentation centered on the role the sponsors play in opening the culverts in Alligator and Frog bayous where they empty into Bayou Manchac. While the culverts are located off the bank, the Mitigation Banking Instrument is written so that the sponsors may be able to claim enhancement credits for their efforts in restoring a more natural hydrologic regime to the Spanish Lake Basin. They also claim that while vegetative enhancement could not be measured, soil functions and processes were enhanced due to no longer being inundated indefinitely, therefore allowing them to receive enhancement credits instead of solely preservation. Once the final member of the IRT is briefed by the sponsor, the IRT will have a conference call to discuss the issue. **Raul Gutierrez, (504) 862-2371.**

Message

From: Martinez, Maria [Martinez.Maria@epa.gov]
Sent: 6/16/2017 9:43:32 PM
To: Gutierrez, Raul [Gutierrez.Raul@epa.gov]
Subject: WAR Issue and Copy of Letter

Raul,

Please don't forget to forward the WAR issue on Spanish Lake as well as the updated factsheet by COB today. I am sure Bill will be asking about it on Monday.

Also, can you please check to see if you have a copy of a letter on the Steve Berard (silviculture) issue? Please send me an electronic copy of the letter if you have it.

Thanks,

Maria

Message

From: Martinez, Maria [Martinez.Maria@epa.gov]
Sent: 4/29/2016 8:33:51 PM
To: Gutierrez, Raul [Gutierrez.Raul@epa.gov]
Subject: Question on Availability - Spanish Lake Meeting

Raul,

Are you available on 6/1 and/or 6/2 in the afternoon to assist us by conference call in the Spanish Lake Meeting with Tim Hardy? Please let me know.

Thanks,

Maria
5-2230

Message

From: Gutierrez, Raul [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EA79459D3FC54DFDA96766E057DBBD10-GUTIERREZ, RAUL]
Sent: 7/25/2017 7:58:36 PM
To: Breaux, Brian W CIV USARMY CEMVN (US) [Brian.W.Breaux@usace.army.mil]
CC: Joe Maryman [jmaryman@wlf.la.gov]
Subject: RE: [Non-DoD Source] Re: Spanish Lake Restoration (UNCLASSIFIED)

Per our conversation earlier today, we are ok with awarding Enhancement credit for Units I and IIa. We still think that Management should remain categorized as Passive for Units I, IIa, III, and VI. Size should be adjusted for Units I and IIa.
Thanks for coordinating with us.

Raul Gutierrez

-----Original Message-----

From: Breaux, Brian W CIV USARMY CEMVN (US) [mailto:Brian.W.Breaux@usace.army.mil]
Sent: Friday, July 21, 2017 2:48 PM
To: Stephen Wallace <stephenr40wallace@gmail.com>
Cc: Gutierrez, Raul <Gutierrez.Raul@epa.gov>; Matthew Weigel (mweigel@wlf.la.gov) <mweigel@wlf.la.gov>; jmaryman@wlf.la.gov; Scott Nesbit <Scott.Nesbit@wetlandsreport.com>; Gregg Fell <gregg.fell@wetlandsreport.com>; Mayer, Martin S CIV USARMY CEMVN (US) <Martin.S.Mayer@usace.army.mil>
Subject: RE: [Non-DoD Source] Re: Spanish Lake Restoration (UNCLASSIFIED)

CLASSIFICATION: UNCLASSIFIED

Scott/Steve: Regarding the LRAM evaluation, we are attempting to finalize the IRT coordination. We note that the attached solicitation has a time limitation and will make every attempt to reach a decision in order for you to have the appropriate information to provide a bid.

-----Original Message-----

From: Stephen Wallace [mailto:stephenr40wallace@gmail.com]
Sent: Thursday, July 20, 2017 9:35 AM
To: Breaux, Brian W CIV USARMY CEMVN (US) <Brian.W.Breaux@usace.army.mil>
Cc: Gutierrez, Raul@epa.gov; Matthew Weigel (mweigel@wlf.la.gov) <mweigel@wlf.la.gov>; jmaryman@wlf.la.gov; Scott Nesbit <Scott.Nesbit@wetlandsreport.com>; Gregg Fell <gregg.fell@wetlandsreport.com>; Mayer, Martin S CIV USARMY CEMVN (US) <Martin.S.Mayer@usace.army.mil>
Subject: [Non-DoD Source] Re: Spanish Lake Restoration

Brian

As a followup to our 6/15/17 meeting and since a full decision has not been finalized yet, we request that the consideration for Units III and VI be advanced first. If possible, we request this decision be communicated to us by end of Monday, 7/24/17, in order for the new SLR values to be applied to the public project described below.

As shown in the attached mitigation request, SLR has been asked by Pontchartrain Levee District (PLD) to provide a bid by 7/28/17 for a flood-control levee project in Ascension Parish. There are currently only 2 banks with cypress mitigation in the Pontchartrain Basin. The other bank cannot meet the total need for the project. Therefore, SLR will need to provide at least the remainder or possibly the entire amount of mitigation. If you agree with our request, the higher credit value requested by SLR for Units III and VI will result in a lower number of acres purchased by PLD and a savings for this public project and will also add much-needed inventory to this basin to meet future mitigation needs.

Due to the time-sensitive nature of this situation, please let us know as soon as possible if this can be accommodated.

Thank you,
Steve Wallace
SLR Manager

On Wed, Jul 12, 2017 at 2:13 PM, Gregg Fell <gregg.fell@wetlandsreport.com
<mailto:gregg.fell@wetlandsreport.com> > wrote:

Good afternoon;

On behalf of SLR, I would like to follow up to our June 15, 2016 meeting, where we presented proposed credit type/value adjustments in accordance with the SLR Interagency Agreement.

Is there any update on the review/evaluation of our presentation and proposed modifications to the SLR Interagency Agreement?

Please let us know if you have any questions or would like to discuss anything further.

Thanks,

Gregg Fell

Senior Permitting Analyst

Natural Resource Professionals, LLC

Blockedwww.wetlandsreport.com <Blockedhttp://www.wetlandsreport.com/>

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CLASSIFICATION: UNCLASSIFIED

Message

From: Gutierrez, Raul [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EA79459D3FC54DFDA96766E057DBBD10-GUTIERREZ, RAUL]
Sent: 6/21/2017 2:56:35 PM
To: Breaux, Brian W CIV USARMY CEMVN (US) [Brian.W.Breaux@usace.army.mil]; Maryman, Joe [jmaryman@wlf.la.gov]
Subject: RE: Texada field visit

Forecast still shows lots of rain and wind (and tornado watch until 10 am tomorrow morning). The site might be too wet or inaccessible, so I say we postpone.

In lieu of the site visit, can we schedule a conference call to discuss Spanish Lake and maybe come up with a consensus or game plan for that issue?

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To: Gutierrez, Raul <Gutierrez.Raul@epa.gov>; Maryman, Joe <jmaryman@wlf.la.gov>
Subject: Texada field visit

Raul/Joe: we are scheduled to do a site visit for the Texada Mitigation Area expansion tomorrow. Are you still up to it or because of the uncertainty with the weather, should we reschedule?

Brian W. Breaux
USACE Regulatory, Special Projects & Policy Team
(504) 862-1938
brian.w.breaux@usace.army.mil

Message

From: Gutierrez, Raul [/O=EXCHANGELABS/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=EA79459D3FC54DFDA96766E057DBBD10-GUTIERREZ, RAUL]
Sent: 5/15/2017 10:28:34 PM
To: Breaux, Brian W CIV USARMY CEMVN (US) [Brian.W.Breaux@usace.army.mil]
CC: Joe Maryman [jmaryman@wlf.la.gov]; Seth Bordelon [seth_bordelon@fws.gov]
Subject: RE: Spanish Lake Restoration - LRAM review

Flag: Follow up

I agree with LDWF and USFWS. If the sponsor wants us to consider enhancement credits, we need to see how they can measure the ecological uplift that has resulted on site. As Seth already mentioned, we would probably not entertain this bank were it to come in under our current compensatory mitigation program. I'll provide additional comments once the sponsor supplies the requested maps and information.

Raul Gutierrez

From: Joe Maryman [mailto:jmaryman@wlf.la.gov]
Sent: Monday, May 15, 2017 12:49 PM
To: Brian Breaux <Brian.W.Breaux@usace.army.mil>
Cc: Gutierrez, Raul <Gutierrez.Raul@epa.gov>; Matthew Weigel <mweigel@wlf.la.gov>; Troy Mallach <Troy.Mallach@la.usda.gov>; Fontenot, Alison <Fontenot.Alison@epa.gov>; Bordelon, Seth <seth_bordelon@fws.gov>
Subject: RE: Spanish Lake Restoration - LRAM review

Brian,

LDWF has reviewed the request to review the LRAM for the Spanish Lake Mitigation Bank and concurs with USFWS comments provided below. More information and details need to be provided showing what qualifies the bank for enhancement credit. Maps need to be provided including as much detail as possible of each Unit (hydrologic features, size, before and after aerial imagery, etc). Once the above information is provided we may provide additional comments.

Also, are there any assurances that the operational plan for the structure won't change again?

Thanks

Joe Maryman
Biologist
Louisiana Department of Wildlife and Fisheries
jmaryman@wlf.la.gov
225-765-2380



From: Bordelon, Seth [mailto:seth_bordelon@fws.gov]
Sent: Thursday, May 11, 2017 12:47 PM
To: Brian Breaux

Cc: Gutierrez, Raul; Matthew Weigel; Joe Maryman; Troy Mallach; Fontenot, Alison
Subject: Re: Spanish Lake Restoration - LRAM review

Brian,

I've reviewed Spanish Lake Restoration's request to re-evaluate their LRAM credits. Below are my comments on each of the three issues they've asked us to consider.

Topic One (changing preservation to enhancement):

- 1) Why did the original MBI fail to mention Unit I as possibly being awarded additional credits if off site hydrologic improvements occurred? At the top of page 23 the MBI states "Specifically, additional credits for Unit II may be generated through basin-wide hydrologic improvements."
- 2) The next sentence in the MBI states "Management of any structures associated with the hydrologic restoration activities will be subject to the policies set forth in the addendum." This could be a problem because the mitigation bank sponsor does not have control over the operations of the Alligator Bayou Flood-Gate. It seems that multiple entities have had an interest in the operation of the flood-gate, including two Parish governments, the Corps (i.e., the Amite River and Tributaries, Bayou Manchac, Louisiana, Flood Damage Reduction and Ecosystem Restoration Project), and several private sector groups. Is this still a contentious issue? Is there a reasonable chance that the structure operation plan could change again in the foreseeable future?
- 3) We recommend that additional data be provided that clearly demonstrates functional lift from "preservation" to "enhancement". The MBI states that "Lands within the preservation portions of the mitigation area currently consist of primarily mature bottomland hardwood forests and baldcypress/tupelogum swamps and are considered to have a high value as wetland and wildlife habitat." I'd like to see maps of each unit that show where the benefits have occurred, vegetation data from before (if available) and after flood-gate closure, as well as elevation data and LIDAR maps within Units I and II. I'd also like to have the top elevation of the flood-gate when its closed to compare to elevations within the units.
- 4) The MBI required that tallow be controlled on all enhancement areas. If we do change the status of the remaining preservation acreage to enhancement, I think it'd be reasonable to require tallow treatments before doing so.

Topic Two (changing Units III and VI to "none" instead of "passive" under the "site management factor"):

- 1) The "passive" ranking might not have had anything to do with the offsite flood-gate. Culverts on the units could have been the reason those areas received a "passive" ranking and other units received "none". I'd like to see a map of Units III and VI that labels all structures/features (e.g., culverts) that affect the sites hydrologic conditions.

Topic Three (changing the size factor to >500 acres for Units I and II):

- 1) I agree that each unit larger than 500 acres should be classified in the proper category (>500 acres). Please label each units size on the requested map.

General Comments:

If a new project was proposed in this area asking for credit due to the functional lift created by the opening of an offsite structure I do not think the IRT would entertain it as a mitigation bank. However, in this case I think we should honor what was written into the MBI by considering the reclassification. They need to provide evidence though that clearly shows how and where functional lift has occurred. The document submitted fails to provide

adequate information. A site visit may also be necessary. I'm not familiar with Spanish Lake and know most of the current IRT members have not worked on this bank before.

Thanks for coordinating with us. Give me a call if you'd like to discuss this further.

Seth Bordelon
U.S. Fish and Wildlife Service
Louisiana Ecological Services Office
646 Cajundome Blvd., Suite 400
Lafayette, LA 70506
(337) 291-3138 (office)
(337) 291-3139 (fax)
seth_bordelon@fws.gov

NOTE: This email correspondence and any attachments to and from this sender is subject to the Freedom of Information Act (FOIA) and may be disclosed to third parties.

On Wed, May 3, 2017 at 10:26 AM, Breaux, Brian W CIV USARMY CEMVN (US)

<Brian.W.Breaux@usace.army.mil> wrote:

ALL: attached is request for review of the LRAM for Spanish Lake Restoration. The sponsor requests reconsideration of values assigned to some of the variables. Essentially, it comes down to our interpretation of the water control structures on Frog Bayou and Alligator Bayou. Does the presence of these structures and their operation which is outside the control of the Sponsor constitute structural management? And should mitigation bank lands generate "enhancement" level credit for the altered operation of these structures?

Please review this information and provide a response/comment by May 12, 2017.

Brian W. Breaux
USACE Regulatory, Special Projects & Policy Team
(504) 862-1938
brian.w.breaux@usace.army.mil